



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-SC-17-0033; SC17-922-1 IR]

**Apricots Grown in Designated Counties in Washington;
Decreased Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Washington Apricot Marketing Committee (Committee) for a decrease in the assessment rate established for the 2017-2018 and subsequent fiscal periods from \$1.40 to \$1.00 per ton of apricots handled. The Committee locally administers the marketing order and is comprised of growers and handlers of apricots operating within the area of production. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by

[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement

Division, Specialty Crops Program, AMS, USDA; Telephone:
(503) 326-2724, Fax: (503) 326-7440, or E-mail:
DaleJ.Novotny@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922, both as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563, and 13175.

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order, and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this

rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington apricot handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable apricots beginning April 1, 2017, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted

therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established under the order for the 2017-2018 and subsequent fiscal periods from \$1.40 to \$1.00 per ton of apricots handled.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of Washington apricots. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2016-2017 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$1.40 per ton of apricots handled, that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 3, 2017, and unanimously recommended 2017-2018 fiscal period expenditures of \$8,225 and a decreased assessment rate of \$1.00 per ton of apricots handled. In comparison, 2016-2017 fiscal period's budgeted expenditures were \$7,160. The assessment rate of \$1.00 per ton is \$0.40 lower than the rate currently in effect.

Favorable growing conditions led to a 2016 crop which was 1,028 tons higher than estimated by the Committee. The extra revenue from the larger than anticipated crop during the 2016-2017 fiscal period, combined with lower than anticipated expenses, resulted in a \$3,064 increase in the Committee's financial reserve.

The major expenditures recommended by the Committee for the 2017-2018 fiscal period include \$4,000 in

management contract services; \$2,000 for the annual audit; \$1,300 for Committee travel expenses; \$500 for technological services, software, and equipment; and \$425 in miscellaneous office expenses. Budgeted expenses for these items in the 2016-2017 fiscal period were \$3,000, \$2,000, \$1,200, \$500, and \$460, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington apricots. After an open discussion with growers, handlers, and industry personnel, the Committee established a crop estimate for the 2017-2018 fiscal period of 6,000 tons. The Committee considered the crop estimate, the recommended 2017-2018 fiscal period expenses, and the Committee's financial reserve when it recommended the assessment rate decrease.

The estimated 6,000 tons of apricot shipments should provide \$6,000 in assessment income at the \$1.00 per ton assessment rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

Sections 922.42(a)(2) and 922.142 of the order authorize the Committee to carry over excess funds into subsequent marketing years as a reserve, provided that funds do not exceed approximately one year's operational expenses. The Committee's financial reserve balance was \$10,365 on March 31, 2017, the end of the 2016-2017 fiscal period. The Committee anticipates a reserve balance of \$8,140 at the end of the 2017-2018 fiscal period, a level which would be within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA.

Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available

information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2017-2018 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by USDA.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 17 Washington apricot handlers subject to regulation under the order and approximately 100 apricot growers in the regulated production area. Small agricultural service firms (handlers) are defined by the

Small Business Administration (SBA) as those whose annual receipts are less than \$7,500,000, and small agricultural producers (growers) are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

Committee reports indicate that the industry shipped 6,028 tons of Washington apricots over the 2016-2017 fiscal period. Based on information from the USDA's Market News Service, 2016 f.o.b. prices for Washington No.1 apricots ranged from \$18.00 to \$23.00 per 24-pound container, for both loose pack and 2-layer tray-pack containers. Using those prices, and the shipment information provided by the Committee, the approximate total value of Washington apricot shipments likely ranged between \$9.0 million and \$11.6 million, with the average revenue per handler ranging from \$532,000 to \$680,000. It is therefore determined that most, if not all, of the Washington apricot handlers ship less than \$7,500,000 worth of apricots on an annual basis.

In addition, using shipment data from the Committee and the 2016 National Agricultural Statistics Service (NASS) average freight on board (f.o.b.) price of \$1,210 per ton for fresh apricots, total revenue for Washington apricot growers for the 2016-2017 fiscal period is

estimated to be approximately \$7.3 million. Based on these reports and the number of apricot growers within the production area, it is estimated that the average per grower revenue from the sale of apricots in 2016 was approximately \$73,000. In view of the foregoing, it is concluded that most of the handlers and growers of Washington apricots may be classified as small entities.

This rule decreases the assessment rate collected from handlers, for the 2017-2018 and subsequent fiscal periods from \$1.40 to \$1.00 per ton of apricots. The Committee unanimously recommended 2017-2018 expenditures of \$8,225. The assessment rate of \$1.00 per ton is \$0.40 lower than the previously established rate.

The quantity of assessable apricots for the 2017-2018 fiscal period is estimated at 6,000 tons. Thus, the \$1.00 per ton rate should provide \$6,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2017-2018 fiscal period include \$4,000 in management contract services; \$2,000 for the annual audit;

\$1,300 for Committee travel expenses; \$500 for technological services, software, and equipment; and \$425 for miscellaneous office expenses. Budgeted expenses for these items in the 2016-2017 fiscal period were \$3,000, \$2,000, \$1,200, \$500, and \$460, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington apricots. After an open discussion with growers, handlers, and industry personnel, the Committee established a crop estimate for the 2017-2018 fiscal period of 6,000 tons. The Committee considered the crop estimate, the recommended 2017-2018 fiscal period expenses, and the Committee's financial reserve when it recommended the assessment rate decrease.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as a presentation from representatives of the Washington Stone Fruit Commission and comments from other industry participants. Alternative expenditure levels and assessment rates were discussed by these groups, based upon the relative value of various activities to the apricot industry. The Committee ultimately determined that the

recommended budget was appropriate and that assessments at \$1.00 per ton, along with interest income and the authorized reserve fund, would generate sufficient revenue to meet those budgeted expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2017-2018 season could range between \$800 and \$1,600 per ton of apricots. Therefore, the estimated assessment revenue for the 2017-2018 fiscal period as a percentage of total grower revenue could range between 0.06 and 0.13 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on growers. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 3, 2017, meeting was a public meeting and all entities, both large and small, were

able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178; Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action decreases the

assessment rate for assessable apricots beginning with the 2017-2018 fiscal period; (2) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (3) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922 - APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for part 922 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On and after April 1, 2017, an assessment rate of \$1.00 per ton is established for Washington apricots handled in the production area.

Dated: September 11, 2017

Bruce Summers
Acting Administrator
Agricultural Marketing Service

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